

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 1884

INTRODUCER: Senator Altman

SUBJECT: Homestead Assessments/Homestead Property Transfer

DATE: March 23, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.			FT	
3.			EA	
4.			WPSC	
5.				
6.				

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**I. Summary:**

This bill provides additional criteria under which a transfer of homestead property is not considered a change of ownership that would require the property to be reassessed at just value. The bill also clarifies that a leasehold interest which qualifies for a homestead exemption under s. 196.031 or s. 196.041, F.S., shall be treated as an equitable interest.

This bill substantially amends s. 193.155 of the Florida Statutes.

**II. Present Situation:**

**Property Valuation**

**Just Value** - Section 4, Art. VII, of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, “just valuation” is synonymous with “fair market value”, and is defined as what a willing buyer would pay a willing seller for the property in an arm’s length transaction.<sup>1</sup>

**Assessed Value** -The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.<sup>2</sup> Agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.<sup>3</sup> Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or

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<sup>1</sup> Section 193.011, F.S., *see also* *Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

<sup>2</sup> The constitutional provisions in section 4, Art. VII, of the State Constitution, were implemented in Part II of ch. 193, F.S.

<sup>3</sup> Art. VII, section 4(a) of the Florida Constitution.

totally exempt from taxation.<sup>4</sup> Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.<sup>5</sup> Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.<sup>6</sup> The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.<sup>7</sup> Certain working waterfront property is assessed based upon the property's current use.<sup>8</sup>

**Taxable Value-** The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.<sup>9</sup>

### **Homestead Exemption**

Article VII, section 6, of the State Constitution, provides that:

every person who has legal or equitable title to real estate and who maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, is exempt from taxation, except assessments for special benefits, in an amount equal to \$25,000 and, for all levies except school district levies, on the assessed valuation greater than \$50,000 and up to \$75,000. The real estate may be held in legal or equitable title, by the entirety, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.<sup>10</sup>

An individual or family unit may not be entitled to more than one homestead exemption.<sup>11</sup>

### **“Save Our Homes” Assessment Limitation**

The “Save Our Homes” (SOH) provision was implemented into section 4(d), Art. VII, of the State Constitution, in 1992, to limit the amount a homestead's assessed value can increase annually to the lesser of three percent or the Consumer Price Index (CPI).<sup>12</sup> The amendment specifically provides that:

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<sup>4</sup> Art. VII, section 4(c) of the Florida Constitution.

<sup>5</sup> Art. VII, section 4(e) of the Florida Constitution.

<sup>6</sup> Art. VII, section 4(f) of the Florida Constitution.

<sup>7</sup> Art. VII, section 4(i) of the Florida Constitution.

<sup>8</sup> Art. VII, section 4(j) of the Florida Constitution.

<sup>9</sup> Art. VII, sections 3 and 6 of the Florida Constitution. *See also* ch. 196, F.S.

<sup>10</sup> Art. VII, section 6(a) of the Florida Constitution. *See also* s. 196.031, F.S.

<sup>11</sup> *See* s. 196.031(1)(a), F.S., and Art. VII, section 6(b) of the Florida Constitution.

<sup>12</sup> Art. VII, section 4(d) of the Florida Constitution.

- All persons entitled to a homestead exemption under section 6, Art. VII of the State Constitution, shall have their homestead assessed at just value by January 1 of the year following the effective date of the amendment.
- Thereafter, annual changes in homestead assessments on January 1 of each year shall not exceed the lower of:
  - Three percent of last year's assessment; or
  - The Consumer Price Index (CPI) for All Urban Consumers, U.S. City Average, all items 1967= 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
- No assessment may exceed just value.

In 1994, the Legislature enacted ch. 94-353, Laws of Florida, to implement the Save Our Homes (SOH) amendment into s. 193.155, F.S. As provided in the constitutional amendment, this legislation requires all homestead property to be reassessed annually on January 1 of each year in accordance to the SOH limitations.

### **Change of Ownership**

Section 4, Art. VII, of the State Constitution, provides that upon a change in property ownership, any SOH savings on that property will no longer apply and the property must be re-assessed at just value as of January 1 of the following year.<sup>13</sup> A change in ownership is defined under Florida Statutes as a “sale, foreclosure, or transfer of legal title or beneficial title in equity”. Pursuant to s. 193.155(3), F.S., there is no change in ownership if:

- The same person is entitled to the homestead exemption subsequent to the change or transfer and:
  - The transfer of title is to correct an error;
  - The transfer is between legal and equitable title;<sup>14</sup> or
  - The change or transfer is a result of an instrument in which the owner is listed as both the grantor and grantee of the real property and one or more other individuals are additionally named as grantee (unless one of the other individuals applies for a homestead exemption on the property);
- The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage;
- The transfer occurs by operation of law under s. 732.4015, F.S.<sup>15</sup>; or
- The transfer occurs between the owner and a legal or natural dependent who permanently resides on the property, upon the death of the owner.<sup>16</sup>

There is no exception currently provided for the transfer of property between equitable interests.

<sup>13</sup> See Art. VII, section 4(d)(4) of the Florida Constitution and s. 193.155(3), F.S.

<sup>14</sup> Legal title “evidences apparent ownership but does not necessarily signify full and complete title or beneficial interest”, where as equitable title “indicates a beneficial interest in property and ... gives the holder the right to acquire formal legal title”. See BLACK’S LAW DICTIONARY 1523 (8th ed. 1990).

<sup>15</sup> Section 732.4015, F.S., provides that the homestead is not subject to devise upon the death of the owner when the owner is survived by a spouse or minor children, and may be devised to the owner’s spouse if there are no minor children.

<sup>16</sup> Section 193.155(a), F.S.

**Qualified Personal Residence Trusts and Leasehold Interests<sup>17</sup>**

A Qualified Personal Residence Trust (QPRT) is one type of equitable title that is permitted to be transferred under the Internal Revenue Code. A QPRT is an equitable device that allows a settler to transfer his or her personal property into an irrevocable trust while retaining the right to reside on the property for specified term of years at which point the property is then transferred to the beneficiaries.<sup>18</sup> The policy behind a QPRT, is to permit “homeowners to transfer property to their children while avoiding future estate taxes”.<sup>19</sup> Beginning in 1995, Florida courts have allowed these settlers/transferrors to retain their homestead exemptions while residing on the property throughout their retained term interest.

***Robbins v. Welbaum***- In *Robbins*, a husband and wife transferred their residence into an irrevocable inter vivos trust retaining a possessory right to live on the property until the earlier of ten years or their death.<sup>20</sup> As trustees with a beneficial title to the property, the homeowners applied for a homestead exemption which was denied by the property appraiser on the grounds that the QPRT limited their use of the residence. After the Value Adjustment Board granted a petition for the exemption, the appraiser appealed to the Third District Court of Appeal for a case of first impression granting the homeowners a homestead exemption. The district court held that s. 196.031, F.S., grants a homestead exemption to persons with a good faith legal or beneficial title to a home, which includes “residents whose stay on the property is limited by jointure or settlement” as is the case here.<sup>21</sup> The court further held that neither the constitution nor Florida Statutes required a special time limit on the beneficial title as a prerequisite for a homestead exemption.<sup>22</sup>

***Notle v. White***- In *Notle*, a homeowner was denied a homestead exemption for property that she conveyed into a QPRT with a right to reside for a term of eight years, on the grounds that she did not hold a life estate in the property.<sup>23</sup> Upholding the rationale in *Robbins v. Welbaum*, the Fourth District Court of Appeal stated that a taxpayer is still entitled to a homestead exemption even if the provisions of the QPRT limits his or her use of the residence to a term of years.<sup>24</sup>

***Higgs v Warrick*** - In *Higgs*, a homeowner created a trust using his single family residence as the trust res and designating his heirs as the beneficiaries in exchange for a 99-year lease to reside on the property.<sup>25</sup> After placing his home into the trust he applied for and received a homestead exemption. However, once he transferred the trust to his heirs the property appraiser denied him a homestead exemption, even though he continued to reside in the home. On appeal, the Value Adjustment Board granted an exemption and the property appraiser appealed to the circuit court and again to the Third District Court of Appeal which held that a 98-year plus lessee of a

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<sup>17</sup> Section 680.1031(1)(m), F.S., defines a *leasehold interest* to mean “the interest of the lessor or the lessee under a lease contract”.

<sup>18</sup> Baskies, Jeffrey A. *Understanding Estate Planning With Qualified Personal Residence Trusts*, 73 Fla. B.J. 72 (1999).

<sup>19</sup> *Robbins Welbaum*, 664 So. 2d 1 (Fla. 3d DCA 1995) citing Peter A. Borrok, *Four Estate Planning Devices to Get Excited About*, N.Y.St. B.J. at 32 (Jan. 1995).

<sup>20</sup> *Id.* at 1.

<sup>21</sup> *Id.* at 2 citing s. 196.041, F.S.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> 784 So.2d 493 (Fla. 4th DCA 2001).

<sup>24</sup> *Id.*

<sup>25</sup> 994 So.2d 492 (Fla. 3d DCA 2008).

residential property which is permanently occupied as a residence qualifies for a homestead exemption pursuant to the statutory language provided in ss. 196.031, and 196.041, F.S.<sup>26</sup>

### **III. Effect of Proposed Changes:**

This bill amends s. 193.155(3), F.S., to provide additional exceptions to the requirement that homestead property must be reassessed at just value upon a change of ownership, by providing that no change in ownership occurs when:

- A transfer of property is between equitable title and equitable title and no additional person applies for a homestead exemption on the property.
- Legal or equitable title is change or transferred between a husband and wife, including a change to a surviving spouse or a transfer due to a dissolution of marriage.
- The transfer of property occurs by operation of law to the surviving spouse or minor child or children under s. 732.401, F.S.

The bill also clarifies that a leasehold interest which qualifies for a homestead exemption under ss. 196.031 or 196.041, F.S., shall be treated as an equitable interest.

This bill shall take effect on July 1, 2010.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

Because this bill does not qualify for one of the exemptions provided in s. 18, Art. VII, State Constitution, and creates new exceptions to the reassessment of homestead property at just value upon a change in ownership, the bill does fall under the mandate provisions of s. 18, Art. VII, State Constitution, and may require a two-thirds vote of the membership of each house of the Legislature.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>26</sup> *Id.* at 493.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

This bill creates additional exceptions for the reassessment of homestead property at just value upon a change in ownership. These exceptions will likely reduce ad valorem tax revenues.

**B. Private Sector Impact:**

Property owners eligible under these new exceptions will see a reduction in their ad valorem taxes.

**C. Government Sector Impact:**

Although the Revenue Estimating Conference has not yet determined the fiscal impact of this bill, in a similar bill filed last year (SB 744), it adopted an indeterminate negative fiscal impact to local governments in January 2009.

This bill requires the Department of Revenue to make minor amends to Rule 12d-8.0061, Florida Administrative Code (F.A.C.).<sup>27</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>27</sup> Department of Revenue, *Senate Bill 1884 Fiscal Analysis* at 2 (Feb. 25, 2010) (on file with the Senate Committee on Community Affairs).